

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:14-cr-0229-APG-NJK

Plaintiff,

**ORDER GRANTING MOTION IN
LIMINE REGARDING DEFENDANT'S
SWORN STATEMENTS**

FRANKIE ALLEN PERAZA,

ECF No. 159

Defendant.

10 The Government moves *in limine* for permission to introduce at trial statements made by
11 defendant Frankie Allen Peraza in a written plea agreement, during his aborted plea hearings, and
12 during a suppression hearing. ECF No. 159. The Government does not seek to introduce those
13 statements during its case-in-chief, but rather hopes to use such statements only for impeachment
14 or rebuttal purposes. Peraza does not oppose the introduction of his sworn, in-court statements for
15 impeachment or rebuttal purposes. ECF No. 164 at 1. But he opposes the use of the statements in
16 his plea agreement.

17 Federal Rule of Evidence 410 generally precludes the admission of statements made during
18 a guilty plea or plea discussions. However, in his plea agreement, Peraza waived his rights under
19 Rule 410. ECF No. 159-1 at 4-5. The Supreme Court of the United States has upheld the
20 enforceability of such contractual waivers. *United States v. Mezzanatto*, 513 U.S. 196, 210 (1995)
21 (“[A]bsent some affirmative indication that the agreement was entered into unknowingly or
22 involuntarily, an agreement to waive the exclusionary provisions of the plea-statement Rules is
23 valid and enforceable.”). Peraza does not argue—and there is nothing in the record to
24 demonstrate—that his waiver was procured through fraud or coercion. Thus, Rule 410 is not
25 applicable here and the Government may use his statements for impeachment and rebuttal purposes.

26 IT IS HEREBY ORDERED that the Government's motion in limine (ECF No. 159) is
27 **GRANTED**. The Government may introduce at trial the facts set forth in the plea agreement to

1 impeach or rebut any evidence, argument or representation offered by or on the defendant's behalf.
2 The Government also may introduce Peraza's sworn statements from his plea hearings and
3 suppression hearing to impeach or rebut any testimony he gives at trial.

4 Dated: August 9, 2017.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE

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